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STEINMAN *v.* CLINCHFIELD COAL CORP.

Sept. 20, 1917.

[93 S. E. 684.]

1. Judgment (§ 564 (1)*)—Conclusiveness—Res Judicata.—For a judgment to constitute *res judicata*, it must be a final judgment on the merits, and hence a judgment of the United States Circuit Court of Appeals, reversing and remanding a cause in which judgment was rendered for plaintiff is not a conclusive adjudication in favor of defendant, for the evidence on retrial might be different than that on the first trial.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 276, 279.]

2. Appeal and Error (§ 1097 (1)*)—"Law of the Case"—Doctrine.—Where there have been two appeals in the same case between the same parties and the facts are the same, nothing decided on the first appeal can, under the doctrine of the "law of the case," be re-examined on the second appeal, but, right or wrong, the decision is binding on both the appellate and inferior courts (citing Words and Phrases, Second Series, Law of the Case).

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 650.]

3. Appeal and Error (§ 1096 (4)*)—Law of Case—Scope of Doctrine.—The rule that under the law of the case where there have been two appeals between the same parties and the facts are the same, nothing decided on the first appeal can be re-examined on the second applies, where the question raised on the second appeal was necessarily involved in the first whether actually adjudicated or not.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 650; 6 Va.-W. Va. Enc. Dig. 360, 364.]

4. Courts (§ 90 (6)*)—Stare Decisis—"Law of Case"—Scope of Doctrine.—Despite the doctrine of "law of the case," an erroneous adjudication on the first appeal, while binding on a second, is not a binding precedent in other cases (quoting Words and Phrases, Second Series, Law of the Case).

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 650; 12 Va.-W. Va. Enc. Dig. 724.]

5. Appeal and Error (§ 1097 (3)*)—Law of Case—Limitations of Doctrine.—The doctrine of the law of the case does not inhibit a party on second trial from supplying omitted facts or from offering a different state of facts, and in such case the decision on the first appeal is not binding as the law of the case.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 650.]

6. Appeal and Error (§ 1097 (1)*)—Law of Case—Limitations of Doctrine.—Where the first court did not have jurisdiction over the

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parties or subject-matter, its determination is not binding on a subsequent appeal as the law of the case.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 650; 6 Va.-W. Va. Enc. Dig. 272.]

7. Courts (§ 89*)—Law of Case—Limitations of Doctrine.—Where the parties are different though the question is the same a case is governed by the rule of stare decisis and the doctrine of the law of the case has no application.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 650; 12 Va.-W. Va. Enc. Dig. 722.]

8. Courts (§ 99 (1)*)—Law of Case—Limitation of Doctrine.—Where a judgment of a federal district court in a suit for ejectment brought by plaintiff was reversed and the case remanded on appeal to the federal Circuit Court of Appeals and on remand plaintiff took a nonsuit, the judgment of the Circuit Court of Appeals is not binding as the law of the case on a subsequent action in a state court, for the doctrine of the law of the case does not apply to a former decision in unended litigation by court of foreign jurisdiction or by a court of concurrent jurisdiction.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 650; 13 Va.-W. Va. Enc. Dig. 403.]

9. Vendor and Purchaser (§ 244*)—Bona Fide Purchaser without Notice—Value.—While Code 1904, § 2465, protects bona fide purchasers for value and without notice from prior unrecorded deeds, it is not required that the consideration should be either fair or adequate, but simply that the purchase should be for value, and proof that plaintiff paid only \$125 for the coal and minerals underlying a tract of 1,000 acres of land which on survey was discovered to contain 2,000 acres does not show that plaintiff was not a purchaser for value, the land titles in the vicinity being very uncertain, and the owner having paid only \$125 for the whole tract some 15 or 20 years previous.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 602.]

10. Vendor and Purchaser (§ 242*)—Bona Fide Purchaser—Burden of Proof.—One claiming title as a bona fide purchaser for value without notice has the burden of showing that he was a purchaser for value, and that the purchase money had been actually paid before notice of defendant's title, and the burden of showing notice rests on defendant.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 602.]

11. Vendor and Purchaser (§ 229 (10)*)—Notice—Constructive Notice.—Notice to the agent of a purchaser is constructive, not actual notice, of an outstanding title, but such notice is as efficacious as actual notice.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 597.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

12. Judgment (§ 292*)—Record in Other Jurisdiction—Actions Involving Title to Land.—Prior to the conveyance to plaintiff, the judgment creditor of an alleged grantee of plaintiff's grantor sued to subject the land to the lien of his judgment, alleging that the deed to the judgment debtor, the grantee, had been lost. The judgment creditor recovered, the lost deed was established, and the land subjected to the lien of the judgment. Code 1904, § 3454, declares that any person aggrieved by any judgment, decree, or order in the controversy concerning the title to or boundaries of land may appeal regardless of the amount in controversy, while § 3455 denies the right of appeal in matters wholly pecuniary from a judgment involving less than \$300. Held, that the suit was not one involving the title to or boundaries to land, the establishment of the alleged lost deed being a mere incident to the subjection of the land to the lien of the judgment, and hence the decree could not be recorded pursuant to § 2510, providing for the recordation and indexing of judgments or decrees for the recovery of land.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 491; 8 Va.-W. Va. Enc. Dig. 332.]

13. Vendor and Purchaser (§ 231 (13)*)—Notice—Instruments Not Entitled to Record—Constructive Notice.—A decree establishing a lost deed in a suit by a judgment creditor to subject to the lien of his judgment land conveyed to the debtor, the deed to which was alleged to have been lost, not being one involving title to the land, its recordation, though properly indexed, did not import constructive notice.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 594, 599.]

14. Judgments (§ 682 (1)*)—Notice—Parties Bound.—A judgment or decree in the absence of statute to the contrary is binding, not only upon the parties, but their privies; hence a decree in a suit by a judgment creditor against plaintiff's grantor and the judgment debtor prior to the conveyance to plaintiff, where it was sought to subject to the lien of the judgment land alleged to have been conveyed by plaintiff's grantor to the judgment debtor and the deed to which had been lost, is, though it established the deed and subjected the land to the lien of the judgment, binding on plaintiff, to whom his grantor subsequently conveyed the land.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 311.]

15. Lost Instruments (§ 5*)—Establishment—Jurisdiction—Controversy.—Where under Code 1904, § 3571, a court of equity had jurisdiction of a bill to enforce a judgment lien against the defendant, it will, though it may have no inherent jurisdiction to set up a lost instrument, do complete justice between the parties by estab-

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lishing a lost deed whereby the land sought to be subjected to the judgment was conveyed to the judgment debtor, for a court of equity having jurisdiction will go on and do complete justice between the parties even to the extent of enforcing purely legal demands.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 476.]

16. Lost Instruments (§ 5*)—Establishment—Jurisdiction—Compliance with Statute.—In such case, it is immaterial to the jurisdiction of the court of equity that the suit did not conform to the statutory requirements for the establishment of lost muniments of title.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 476.]

17. Equity (§ 138*)—Pleading—Prayer for General Relief.—A prayer for general relief should never be omitted in any bill in equity, because if the special relief prayed for cannot be given, the court, under the prayer for general relief, may grant proper relief consistent with the case made by the bill.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 133.]

18. Equity (§ 324*)—Pleading—Prayer.—Where a bill prayed that land be subjected to the lien of a judgment, such prayer, though there was no prayer for general relief, carried with it an implied prayer to do what was necessary for the enforcement of the lien against the land, and warranted the court in establishing the judgment debtor's title; his deed to the land having been lost.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 465, 470.]

19. Creditors' Suit (§ 22*)—Relief Granted.—As it is the duty of courts on judicial sale to see that land is sold under the most advantageous circumstances, a cloud on the title to the land sought to be subjected to the lien of a judgment may, under a prayer for enforcement of the lien, be removed.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 686.]

20. Lis Pendens (§ 13*)—Statutes—Effect.—Code 1904, § 3566, declaring that no lis pendens or attachment shall bind or affect a bona fide purchaser of land for valuable consideration without actual notice unless a memoranda setting forth the title of the cause, the general object, the court in which it is pending, with a description of the land, and the name of the persons whose estate is intended to be affected thereby, shall be left with the clerk of the court of the county or corporation in which the land is situated, who shall forthwith record the memorandum in the deed book, does not apply to a purchaser from a defendant after the rendition of the decree which divested such defendant of title in land, established the title in another and subjected it to the lien of a judgment against such third person, the statute being applicable only to conveyances during the pendency of litigation.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 456.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Dickenson County.

Ejectment by A. J. Steinman against the Clinchfield Coal Corporation. There was a judgment for defendant, and plaintiff brings error. Affirmed.

Irvine & Stuart, of Big Stone Gap, for plaintiff in error.

Fulton & Vicars and *Bond & Bruce*, all of Wise, and *Morison*, *Morison & Robertson*, of Big Stone Gap, for defendant in error.

MATNEY et al. v. YATES et al.

Sept. 20, 1917.

[93 S. E. 694.]

1. Lost Instruments (§ 22*)—Establishment—Pleading.—Plaintiffs were properly denied relief upon the theory of a lost deed, where they merely alleged on information and belief that the deed was made, but admitted that they would be unable to prove the making and the loss thereof.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 478.]

2. Equity (§ 429*)—Vacation Decree—Amendment—Powers of Court.—Code 1904, § 3293, giving the court control over all proceedings in the office during the preceding vacation, does not apply to vacation decrees entered pursuant to the provisions of § 3427, as to submission of causes in vacation.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 771; 8 Va.-W. Va. Enc. Dig. 517.]

3. Equity (§ 442*)—Vacation Decree—Bill of Review—Powers of Court.—Where a motion is erroneously made for a rehearing of a vacation decree, the court may treat the petition as a bill of review, where it plainly seeks to correct an error of law apparent on the face of the record, such proceeding being appropriate for the correction of a final decree by the court wherein it was rendered.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 771; 8 Va.-W. Va. Enc. Dig. 530, 532.]

4. Equity (§ 148 (1)*)—Pleading—Multifariousness.—Where a bill sought to perfect title either by establishment of a lost partition deed or by obtaining release deeds from all the heirs of one party, it was not multifarious, having but one general purpose.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 133.]

5. Trusts (§ 371*)—Establishment—Pleading—Sufficiency.—A bill, alleging that complainants claim ownership of certain land as successors in title of the original owners, and have succeeded to possession which has continued ever since an oral partition sufficiently alleges

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.